

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BARBARA RICHARDS, a single individual,

Plaintiff,

VS.

SAFEWAY, INC., a foreign corporation d/b/a  
45106 SAFEWAY and KIMCO REALTY  
CORPORATION, a foreign corporation d/b/a  
PK I SILVERDALE SHOPPING CENTER,  
LLC, and DOES 1 through 5.,

## Defendants.

No.

**SAFEWAY INC.'S NOTICE OF  
REMOVAL OF ACTION TO 28 U.S.C. §§  
1332, 1441 AND 1446**

[REMOVED FROM KITSAP COUNTY  
SUPERIOR COURT CAUSE NO. 21-2-  
01381-18]

TO: Clerk, U.S. District Court, Western District of Washington at Tacoma;

AND TO: All Counsel of Record.

Defendant Safeway Inc. hereby removes to this Court the state court action described below on the grounds stated herein, and as supported by the Declaration of Kimberly A. Reppart and the exhibits attached thereto.

## **I. INTRODUCTION & STATEMENT OF FACTS**

On September 24, 2021, Plaintiff served defendant Safeway Inc. with a lawsuit captioned

SAFEWAY INC.'S NOTICE OF REMOVAL OF ACTION TO 28 U.S.C. §§ 1332,  
1441 AND 1446 – 1  
CAUSE NO. \_\_\_\_\_

**FORSBERG & UMLAUF, P.S.**  
ATTORNEYS AT LAW  
901 FIFTH AVENUE • SUITE 1400  
SEATTLE, WASHINGTON 98164  
(206) 689-8500 • (206) 689-8501 FAX

1 in Kitsap County Superior Court entitled *Barbara Richard v. Safeway Inc.*, et al, Declaration of  
2 Kimberly A. Reppart, Exs. 1 and 2.

3 This Notice of Removal is timely under 28 U.S.C. § 1446(b)(1) because it is being filed  
4 “...within thirty days after receipt by the defendant, through service or otherwise, of a copy of the  
5 initial pleading setting forth the claim for relief upon which such action or proceeding is based...”  
6 28 U.S.C. § 1446(b)(1). Plaintiff is claiming more than \$75,000 in damages, as confirmed by  
7 Plaintiff’s Response to Request for Statement of Damages documenting Plaintiff’s claim for  
8 \$175,000.00 in past medical specials. Reppart Decl., Ex. 4.

9 Plaintiff is a resident of the State of Washington. Reppart Decl., Ex. 2. Safeway Inc. is a  
10 Delaware corporation with headquarters located in Pleasanton, California. Reppart Decl., Ex. 3.  
11 Defendant Kimco Realty Corporation is a Maryland Corporation with a principal place of business  
12 in Jericho, New York. Reppart Decl., Ex. 5. Defendant PK I Silverdale Shopping Center LLC is  
13 a Delaware limited liability company with a principal place of business in Jericho, New York.  
14 Reppart Decl., Ex. 6. All Defendants consent to Removal. Reppart Decl.; Declaration of David  
15 Cottnair.

## 16 II. BASES FOR REMOVAL

### 17 A. There is Complete Diversity of Citizenship under 28 USC § 1332.

18 This Court has subject matter jurisdiction over this civil action pursuant to 28 U.S.C. §  
19 1332(a)(1) and (a)(3), and this action is one that can be removed to this Court by Defendant  
20 pursuant to 28 U.S.C. § 1441(b) in that it is a civil action between citizens of different states and  
21 the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

22 The Plaintiff is a resident of Washington State. Reppart Decl., Ex. 2. Defendant Safeway  
23 Inc. is a Delaware corporation with headquarters located in Pleasanton, California. Reppart Decl.,

SAFEWAY INC.’S NOTICE OF REMOVAL OF ACTION TO 28 U.S.C. §§ 1332,  
1441 AND 1446 – 2  
CAUSE NO.

3077570 / 824.0097

**FORSBERG & UMLAUF, P.S.**  
ATTORNEYS AT LAW  
901 FIFTH AVENUE • SUITE 1400  
SEATTLE, WASHINGTON 98164  
(206) 689-8500 • (206) 689-8501 FAX

1 Ex. 3. Defendants Kimco Realty Corporation and PK I Silverdale Shopping Center LLC are  
2 Maryland and Delaware entities respectively. Reppart Decl., Exs. 5 and 6. Removal of the  
3 Plaintiff's action to this Court is proper because there is complete diversity of citizenship of the  
4 parties pursuant to 28 U.S.C. § 1332, and there was complete diversity at the time Plaintiff's  
5 lawsuit was served.

6 **B. The Amount in Controversy Exceeds the Jurisdictional Minimum.**

7 Plaintiff indicated in Plaintiff's Response to Defendant's Request for Statement of  
8 Damages that she is claiming more than \$75,000. Reppart Decl., Ex. 4. This information is  
9 sufficient to conclude that plaintiff seeks to recover in excess of \$75,000 in damages against  
10 Defendant.

11 **C. This Notice of Removal is Timely Under 28 USC § 1446(b).**

12 This Notice of Removal is timely under 28 U.S.C. § 1446(b)(1) because it is being filed  
13 "...within thirty days after receipt by the defendant, through service or otherwise, of a copy of the  
14 initial pleading setting forth the claim for relief upon which such action or proceeding is based..."  
15 28 U.S.C. § 1446(b)(1).

16 **D. This Notice of Removal Complies with the Applicable Local Rules, and  
17 Venue Is Proper in the Western District of Washington under 28 U.S.C. §  
18 128(b).**

19 This Notice of Removal complies with all applicable Federal Rules of Civil Procedure and  
20 Local Rules. Defendant has attached to the Declaration of Kimberly Reppart, filed in support of  
21 this Notice, copies of all process, pleadings, and orders served upon it in the state court action, as  
22 required by 28 U.S.C. § 1446. Venue is proper in this District pursuant to 28 U.S.C. §§ 128(b)  
23 and 1391, because this District encompasses Kitsap County, the county listed in the state court  
complaint served on Defendant.

SAFEWAY INC.'S NOTICE OF REMOVAL OF ACTION TO 28 U.S.C. §§ 1332,  
1441 AND 1446 – 3  
CAUSE NO.

3077570 / 824.0097

**FORSBERG & UMLAUF, P.S.**  
ATTORNEYS AT LAW  
901 FIFTH AVENUE • SUITE 1400  
SEATTLE, WASHINGTON 98164  
(206) 689-8500 • (206) 689-8501 FAX

1 Defendant is serving Plaintiff with copies of this Notice of Removal and the supporting  
2 Declaration of Kimberly Reppart (with exhibits).

3 **E. All Defendants Consent to Removal of the Action Pursuant to 28 U.S.C.**  
4 **1446(b)(2)(A).**

5 Counsel for Defendant Safeway Inc. confirmed that Defendants Kimco Realty Corporation  
6 and PK I Silverdale Shopping Center LLC consent to removal pursuant to 28 U.S.C.  
7 1446(b)(2)(A). Reppart Decl.; Declaration of David Cottnair.

8 **III. CONCLUSION**

9 Plaintiff's civil action, originally venued in Kitsap County Superior Court for the State of  
10 Washington, may be removed pursuant to 28 U.S.C. 1441 and 1446 to the United States District  
11 Court for the Western District of Washington at Tacoma.

12 Dated this 21<sup>st</sup> day of October, 2021.

13 FORSBERG & UMLAUF, P.S.

14   
15 Kimberly A. Reppart, WSBA #30643  
16 901 Fifth Avenue, Suite 1400  
17 Seattle, WA 98164  
18 Tel: 206-689-8500  
Facsimile: 206-689-8501  
Email: kreppart@foum.law  
Attorney for Defendant Safeway Inc.

13 FORSBERG & UMLAUF, P.S.

14   
15 Alexandra E. Ormsby, WSBA #52677  
16 901 Fifth Avenue, Suite 1400  
17 Seattle, WA 98164  
18 Tel: 206-689-8500  
Facsimile: 206-689-8501  
Email: aormsby@foum.law  
Attorney for Defendant Safeway Inc.

**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing **SAFEWAY INC.'S NOTICE OF REMOVAL OF ACTION TO 28 U.S.C. §§ 1332, 1441 AND 1446** on the following individuals in the manner indicated:

9 Ms. Carrie E. Eastman  
Sanchez, Mitchell, Eastman & Cure, PSC  
10 4110 Kitsap Way, Suite 200  
Bremerton, WA 98312-2401  
11 (X) Via ECF and Email: [cee@spinnakerbldg.com](mailto:cee@spinnakerbldg.com)

9 Mr. David S. Cottnair  
Preg O'Donnell & Gillett  
10 901 Fifth Avenue, Suite 3400  
Seattle, WA 98164  
11 (X) Via ECF and Email:  
[dcottnair@pregodonnell.com](mailto:dcottnair@pregodonnell.com)

**SIGNED** this 21<sup>st</sup> day of October, 2021, at Seattle, Washington.

/s/ Erin D. Gray

Erin D. Gray

SAFEWAY INC.'S NOTICE OF REMOVAL OF ACTION TO 28 U.S.C. §§ 1332,  
1441 AND 1446 – 5  
CAUSE NO.

**FORSBERG & UMLAUF, P.S.**  
ATTORNEYS AT LAW  
901 FIFTH AVENUE • SUITE 1400  
SEATTLE, WASHINGTON 98164  
(206) 689-8500 • (206) 689-8501 FAX